



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of Claims Against the Dealer Bond
of A and B Auto, Inc., d/b/a Auction Auto Sales

Case No.: TR-12-0004

FINAL DECISION

On February 7, 2012, an employee of the Division of Motor Vehicles, Department of Transportation filed a claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of A and B Auto, Inc., d/b/a Auction Auto Sales. On February 24, 2012, the Department forwarded the claim along with documents gathered by the Department during its investigation of the claim to the Division of Hearings and Appeals. The Administrative Law Judge issued a Preliminary Determination on these claims on June 29, 2012. No objection to the Preliminary Determination was received. Pursuant to Wis. Admin. Code § Trans 140.26(5)(d), the Preliminary Determination is adopted as the final decision of the Department of Transportation.

In accordance with Wis. Stat. § 227.47 and 227.53(1)(c) the PARTIES to this proceeding are certified as follows:

Wisconsin Department of Transportation
Division of Motor Vehicles
Revenue Accounting
P.O. Box 7336
Madison, WI 53707-7336

Arthur Banks
5673 North 90th Street
Milwaukee, WI 53225

Denise Banks
5675 North 90th Street
Milwaukee, WI 53225

Capitol Indemnity Corporation
Bond Claim Department
P. O. Box 5900
Madison, WI 53705-0900

FINDINGS OF FACT

1. A and B Auto, Inc., dba Auction Auto Sales, (the Dealer) is licensed by the Wisconsin Department of Transportation (Department) as a motor vehicle dealer. Arthur and Denise Banks are the co-owners of A and B Auto, Inc. The Dealer's facilities were located at 5211 West Lisbon Avenue, Milwaukee, Wisconsin, 53210. The Dealer went out of business effective June 16, 2011.

2. The Dealer has had a surety bond in force satisfying the requirements of Wis. Stat. § 218.0114(5) since February 9, 2009 (Bond # 60082136 from Capitol Indemnity Corporation). On November 15, 2011, the Department received a cancellation of Bond # 60082136. The cancellation was effective February 9, 2012.

3. Between February 10, 2011 and February 22, 2011, the Dealer submitted to the Department's Division of Motor Vehicles (DMV) applications for motor vehicle titles and registrations for vehicles it sold to retail customers. The applications were processed electronically via the DMV's eMV11 system. The payments accompanying the applications were made through the Automated Clearing House (ACH) system. The DMV received notification that the ACH payment were returned due to insufficient funds. The DMV sent a letter requesting reimbursement for the insufficient funds payments. The Dealer has not responded to the DMV's request and has not provided reimbursement for the insufficient funds payments.

4. On February 7, 2012, the DMV submitted a claim against the surety bond of the Dealer in the amount of \$1784.00. This figure represents the sum of the insufficient fund payments.

5. The Dealer's failure to submit the required fees along with the MV-11s constitutes a violation of Wis. Stat. § 342.06(1). A violation of Wis. Stat. § 342.06(1), in turn, constitutes a violation of Wis. Stat. § 218.0116(1)(gm) (having violated any law relating to the sale, lease, distribution, or financing of motor vehicles).

6. The loss sustained by the DMV was caused by an act of the Dealer that would be grounds for the suspension or revocation of its motor vehicle dealer license. Accordingly, the claim is allowable. The DMV has provided documentation to support a claim in the amount of \$1784.00.

7. The DMV's claim arose during the time period between February 10, 2011 and February 22, 2011. The bond claim was filed within three years of the ending

date of the one-year period a surety bond issued by Capitol Indemnity Corporation was in effect and is, therefore, a timely claim.

CONCLUSIONS OF LAW

1. The DMV's claim arose during the time period between February 10, 2011 and February 22, 2011. Capitol Indemnity Corporation issued a surety bond to the Dealer covering the one year period commencing on February 9, 2011. The claim arose during the period covered by the surety bond.
2. The DMV filed a claim against the motor vehicle dealer bond of the Dealer on February 7, 2012. The bond claim was filed within three years of the last day of the period covered by the surety bonds. Pursuant to Wis. Admin. Code § Trans 140.21(1)(d), the claim is timely.
3. The DMV's loss was caused by an act of the Dealer which would be grounds for suspension or revocation of its motor vehicle dealer license. Pursuant to Wis. Admin. Code § Trans 140.21(1)(c), the claim is allowable. The DMV has provided documentation to support a claim in the amount of \$1784.00.
4. The Division of Hearings and Appeals has authority to issue the following order:

ORDER

The claim filed by the Division of Motor Vehicles against the motor vehicle dealer bond of A and B Auto, Inc., dba Auction Auto Sales, is APPROVED in the amount of \$1784.00. Capitol Indemnity Corporation shall pay the Division of Motor Vehicles this amount for the loss attributable to the actions of A and B Auto, Inc., dba Auction Auto Sales.

Dated at Madison, Wisconsin on August 9, 2012.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705-5400
Telephone: (608) 266-7709
FAX: (608) 264-9885

By: _____

Mark F. Kaiser
Administrative Law Judge

NOTICE

Set out below is a list of alternative methods available to persons who may wish to obtain review of the attached decision of the Administrative Law Judge. This notice is provided to insure compliance with Wis. Stat. § 227.48 and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Department of Transportation a written petition for rehearing pursuant to Wis. Stat. § 227.49. A copy of any such petition for rehearing should also be provided to the Administrative Law Judge who issued the order. Rehearing may only be granted for those reasons set out in Wis. Stat. § 227.49(3). A petition under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.

2. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of Wis. Stat. §§ 227.52 and 227.53. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (1) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Pursuant to Wis. Admin. Code § TRANS 140.26(7), the attached final decision of the Administrative Law Judge is a final decision of the Department of Transportation, so any petition for judicial review shall name the Department of Transportation as the respondent. The Department of Transportation shall be served with a copy of the petition either personally or by certified mail. The address for service is:

Office of General Counsel
4802 Sheboygan Avenue, Room 115B
Wisconsin Department of Transportation
Madison, Wisconsin 53705

Persons desiring to file for judicial review are advised to closely examine all provisions of Wis. Stat. § 227.52 and 227.53 to insure strict compliance with all its requirements.